

---

TABLE OF CONTENTS

<u>Paragraph and Subject</u>	<u>Page</u>	<u>Date</u>	<u>Trans. No.</u>
<u>Chapter 2-1400 Hearings and Reviews of the Written Record</u>			
Table of Contents. . . . .	i	06/02	02/01
1 Purpose and Scope. . . . .	1	06/02	02/01
2 Policy . . . . .	1	06/02	02/01
3 Actions Following a Hearing or Review of the Written Record . . . . .	6	06/02	02/01
4 Reconsiderations . . . . .	7	06/02	02/01
5 Automatic Affirmation Upon Expiration of One Year . . . . .	7	06/02	02/01

## Part 2 - Claims

Hearings and Reviews  
of the Written Record

---

1. Purpose and Scope. This chapter describes the procedures included in arranging for the hearing, conducting the hearing, and issuing a decision. Additionally, procedures are described for handling requests for review of the written record. These functions are the responsibility of the Final Adjudication Branch (FAB). Certain post-decision actions are also described.

2. Policy. This paragraph describes the scope of the claims hearing and the review of the written record.

a. Right to a Hearing. Cases in which the claimant has requested a hearing and has submitted specific objections to findings of fact or conclusions of law contained in the DO's recommended decision in a timely manner and has not also made a timely request for a review of the written record will be assigned to FAB for scheduling. Hearings will also be conducted in those cases in which the FAB has exercised its discretionary authority in determining one is warranted.

(1) Notice of Scheduling and Issues. Written notice of the date, time and place of the hearing will be mailed to the claimant and any representative at least 30 days prior to the scheduled hearing date. Scheduling is solely within the discretion of the FAB hearing representative. However, the hearing representative may accommodate scheduling requests if possible. The written notice will also set the issue(s) to be addressed at the hearing based on the objections raised by the claimant. At any time prior to the hearing, the claimant may make a request to change from a hearing to a review of the written record.

(2) Postponement. Once the hearing is scheduled and the notice is mailed, the hearing cannot be postponed at the claimant's request unless proper documentation is submitted to show that the claimant is to be hospitalized for a reason that is not elective, or if the death of the claimant's parent, spouse or child prevents his or her attendance at the hearing. If the postponement request does not satisfy either of these

---

2. Policy. (Continued)

tests, instead of a hearing the claimant's objections to the recommended decision will be considered by one of the following methods, and no further opportunity for a hearing will be provided:

(a) Review of the Written Record. The FAB hearing representative will consider the issues raised by the claimant by reviewing the written record of the claim. (See paragraph 2.c below.)

(b) Teleconference. The FAB hearing representative has the discretion to substitute a teleconference for a review of the written record.

(3) Failure to Appear at the Hearing. A claimant may be excused for failure to appear at the scheduled hearing for the reasons described above or due to unusual circumstances (e.g. inclement weather). If the claimant fails to appear for any other reason, the FAB will consider the claimant's objections to the recommended decision by a review of the written record. No further opportunity for a hearing will be provided. The hearing representative must hold the claim open for 10 days to allow the claimant an opportunity to present evidence to support his/her failure to appear. If no such documentation is provided, the hearing representative should proceed with a review of the written record.

b. Holding the Hearing. The hearing process is open and informal, and the FAB hearing representative is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. Before opening the hearing, the FAB hearing representative will explain to all parties present that the proceedings are non-adversarial in nature and that the claimant will have the opportunity to present written or verbal evidence that addresses the

## Part 2 - Claims

Hearings and Reviews  
of the Written Record

---

2. Policy. (Continued)

issues listed in the notice of the hearing. The FAB hearing representative is in charge of the hearing and may terminate the hearing at any time s/he determines that all relevant evidence has been obtained, or because of misbehavior by the claimant (or any representative) at or near the place of the hearing.

(1) Opening the Hearing. At the beginning of the proceedings, the FAB hearing representative will:

- (a) Note the date and time for the record;
- (b) Identify all persons present by name;
- (c) Make an opening statement outlining the issues that may be addressed at the hearing;
- (d) Afford the claimant (or his/her representative) an opportunity to make an opening statement; and
- (e) Administer an oath to all persons testifying.

(2) Presentation. The claimant (or his/her representative) may offer evidence regarding the issue(s) listed in the notice in any manner desired. Pursuant to 20 C.F.R. § 30.310(b)(1), the FAB hearing representative also has the discretion to permit further objections to the recommended decision to be raised at the hearing. Written evidence offered should be acknowledged for the record by the FAB hearing representative and made a part of the case file. During the claimant's presentation, the FAB hearing representative should note any additional questions or areas for exploration and make appropriate inquiries prior to terminating the hearing.

## Part 2 - Claims

Hearings and Reviews  
of the Written Record

---

2. Policy. (Continued)

(3) Conclusion. When all witnesses have spoken and the FAB hearing representative has obtained all necessary clarifications, the FAB hearing representative will close the proceedings by noting the time of completion for the record. The claimant will have 30 days after the date of the hearing to submit additional written evidence or argument on the issue(s) in question, unless the FAB hearing representative, in his or her discretion, grants an extension of this period. Only one such extension is permitted.

(4) Transcript. The FAB hearing representative will furnish a copy of the transcript of the hearing to the claimant (or the representative), who will have 20 days from the date it is sent to submit any comments on it to the FAB hearing representative.

c. Right to a Review of the Written Record. Cases in which the claimant has submitted specific objections to findings of fact or conclusions of law contained in the DO's recommended decision in a timely manner, but has not also made a timely request for a hearing, will be assigned to personnel in the FAB for a review of the written record. Reviews of the written record will also be conducted in those cases in which the FAB has exercised its discretionary authority in determining one is warranted.

(1) Nature of Review. The FAB will review the written record forwarded by the DO and any written evidence or arguments raised by the claimant. This review is limited to the specific and timely objections that the claimant raised.

(2) Closing the Record to New Evidence/Arguments. Prior to closing the record to any new evidence or arguments in support of the claimant's timely objections, the FAB will provide the claimant with written notice of the date by which s/he must submit such new evidence or arguments to the FAB for consideration.

## Part 2 - Claims

Hearings and Reviews  
of the Written Record

---

3. Actions Following a Hearing or a Review of the Written Record. Upon completion of either a hearing or a review of the written record, the FAB will take further action on the claim with respect to the specific objections raised.

a. Further Development. If additional development is required, the case will usually be remanded to the DO with instructions. For example, the case will be remanded to the DO for referral to HHS if the FAB determines either that HHS's factual findings are not supported by substantial evidence, or arguments regarding HHS's application of its methodology for reconstructing radiation doses should be considered. For those situations where the further development can be completed readily, the FAB may choose to complete such development itself and incorporate the results into the decision.

b. Decisions. The FAB will issue a decision on the claim that addresses the specific objections raised. The decision may affirm, reverse, or modify the recommended decision, or any part thereof. The format of the decision should be consistent with that discussed in PM 2-1100 (Recommended Decisions). The FAB representative must ensure that the decision encompasses all aspects of the case from development through the hearing process. The decision will be accompanied by a cover letter explaining that the case record will be returned to the DO for further action (such as payment of benefits). The letter may also contain specific instructions to the DO on case related issues (not included in the final decision) requiring the CE's attention. This cover letter will explain that the decision of the FAB will be final in 30 days, and the claimant has until that time to request the FAB reconsider its decision.

c. Return of the File to the DO. After the FAB issues its decision and the 30-day period for requesting reconsideration has expired without the claimant requesting a reconsideration, the FAB's decision becomes final and jurisdiction over the claim returns to the DO. Once this occurs, the case is returned to the DO for either routine maintenance or payment of benefits.

## Part 2 - Claims

Hearings and Reviews  
of the Written Record

---

4. Reconsiderations. Before the FAB's decision becomes final and the case record is returned to the DO, 20 C.F.R. § 30.319 provides that the claimant may make a written request that the FAB reconsider its decision.

a. Timeliness. A reconsideration request will be considered timely if the envelope containing it is postmarked no later than the 30<sup>th</sup> day after the date of the FAB decision. (The date of the FAB decision is not included in the 30 days). If the 30<sup>th</sup> day falls on a non-business day, the envelope must be postmarked on the next business day for the reconsideration request to be timely.

b. Type of Review Available on Reconsideration. A claimant may not request a hearing in conjunction with a request for reconsideration. Instead, the FAB will decide whether to grant or deny the claimant's request on the basis of the written submission only.

c. Denying/Granting the Request. The FAB maintains discretion to determine whether a request for reconsideration is granted or rejected. If the FAB denies the request, the decision in question will be considered final on the date the request is denied. However, if the FAB grants the request, it will conduct another review of the recommended decision and issue a new decision on the claim. This review will consist of a review of the written record. A claimant cannot request a hearing at this stage of the claims adjudication process. (See 20 C.F.R. §§ 30.310(b) and 30.319(b).)

5. Automatic Affirmation upon Expiration of One Year. Under 20 C.F.R. § 30.316 (c), any recommended decision that is pending at the FAB on the one-year anniversary of the date that the record was received from the DO will be considered affirmed by the FAB on that one-year anniversary. Since this particular type of action is automatic, the FAB will not issue an actual "decision" affirming the DO's recommended decision. Like other FAB decisions, however, these affirmations may be reconsidered by the FAB if the claimant files a timely request.